IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 788 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL PARSHOTTAM SOMNATH

Versus

STATE OFGUJ

Appearance:

1. Criminal Appeal No. 788 of 1994

MR UNWALA for Appellant No.

MRS.HARSHA DEVANI,APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 07/07/2004

ORAL JUDGEMENT

1. The appellant, by this appeal, has challenged the judgment and order of conviction and sentence dated 4.6.1994 passed by the learned Special Judge, Mehsana in

Essential Commodities Case No. 18 of 1988 whereby the appellant was convicted under section 7(1)(A)(2) of the Gujarat Essential Commodities Act and sentenced to suffer R.I. for three months and to pay a fine of Rs. 500/-, in default, to undergo further R.I. for seven days.

2. The complainant Parbatsinh Laxmansinh Rathod, Civil Supplies Inspector of the Office of Collector, Mehsana filed Criminal Case against the appellant wherein it was inter alia alleged that the complainant had inspected fair price shop of the appellant on 11.7.1992 in which he found certain irregularities. On the strength of the report made by him, show cause notice came to be issued by the Collector, Mehsana against the appellant. The appellant gave his explanation and thereafter the aforesaid Criminal Case came to be filed against the appellant.

3. The complainant noticed the following irregularities:

(i) The board was not properly maintained;
(ii) Complaint Book was not kept;
(iii) Names of essential articles were not referred to in the Bill Book;
(iv) Card Registers were not certified;
(v) About 49 Kgs. of Palmolene Oil was sold in excess of the quota to individuals and thereby 49 Kgs. of Palmolene Oil was sold unauthorisedly.

According to the complainant, the appellant had committed breach of sections 16, 23, 24 of Essential Commodities (Licence, Control and Stock Declaration) Order, 1981 and also committed breach of Conditions No. 5,9 and 11 of the licence.

4. The learned Trial Judge, after appreciating the oral evidence of Parbatsinh Rathod at Ex. 15, Gagaji Nathaji at Ex. 21, Gordhan Patel Ex.28 and Amrut Patel at Ex. 29 and other documentary evidence as also the further statement of the appellant under section 313 of the Code of Criminal Procedure, convicted the appellant for offence punishable under sections 7(1)(A)(2) of the Essential Commodities Act.

5. The learned advocate Mr. Unwala appearing for the appellant, after taking me through the entire evidence on record, submitted that the trial court has committed an error in convicting the appellant. Elaborating the submissions, learned advocate submitted

that the prosecution case has not been supported by the panch as well as the witnesses. In the submission of learned advocate, the irregularities alleged against the appellant and more particularly irregularities no. 1 to 4 which are technical in nature were noticed by the complainant at the time when the appellant was about to start his business. As far as irregularity no.5 wherein the allegation of 49 Kgs. of Palmolene Oil given or sold in excess of quota is concerned, the same is not tenable in view of the fact that the same is based on the bill which has been prepared second time of the same person and such person has not denied to have received goods second time.

6. Mrs.Harsha Devani, learned APP on the other hand, supported the judgment of the trial court in toto.

7. The complainant Parbatsinh Rathod, PW 1 Ex. 15, though filed a complaint regarding the alleged irregularities committed by the appellant, in his cross examination, has admitted that he was not present at the time of visit of the shop of the appellant and he has no personal knowledge. He has deposed on the basis of available papers.

8. Gagaji Nathaji, PW 2 Ex. 21 who at the relevant time was serving in the Office of the Director, Civil Supplies, Gandhinagar, had visited the shop of the appellant on 10.7.1986 in presence of panchas and found many irregularities. He has also recorded the statements of Amrutbhai Patel and Shambhubhai Patel, the card holders who received excess quantity of Palmolene Oil. PW 4 Amrutbhai Patel, in his cross examination, has admitted that after 21 bills, he found that excess quantity of goods was supplied to the card holders.Except the said irregularity, the rest of the irregularities were minor in nature. He has also admitted that as and when the stock is received, customers in large number assemble to purchase goods. He has denied the suggestion that if a card holder is given goods which are not entered in the card, the same card holder can be given same goods second time in the same month by mistake. The panchanama Ex. 22 of the inspection carried out by Mr. Bihola is on record. However, the panch Gordhanbhai Patel, PW 3 Ex. 28 has not supported the prosecution and was declared hostile.

9. Against the above evidence, the appellant had given written explanation dated 28.1.1987 to the Collector wherein he had stated that the visiting party had come to his shop immediately after he opened the shop

and, therefore, he could not mention the details on the board and could not furnish other details. The say of the appellant appears to be consistent with the other documents on record. The panchanama Ex. 22 does not mention the timings of the recording of panchanama; it only states regarding completion of panchanama at 16.20 hours. In the oral evidence, no witness has given the time of visiting the shop and the time of recording of panchanama. In absence of this, the explanation offered by the appellant with respect to the allegations no. 1 to 4 is more plausible and acceptable.

10. With regard to the allegation of 49 Kgs. of Palmolene Oil given or sold in excess of quantity, in my opinion, it is not tenable as the same is based on the bill which has been prepared second time in respect of the same person. The prosecution, in the instant case, has examined Amrutbhai Patel, PW 4 Ex. 29, one of the card holders who, in his evidence, has stated that he had in fact received the goods as noted in the card. In his cross examination, he has clearly admitted that because of overcrowding at the shop, goods given were not entered in the card and in that event, the shop keeper, by mistake, may give goods of the quota of that month. Thus, from the evidence of this witness,it is clear that he has not denied to have received goods second time. On the contrary, he has clearly stated that if the goods are not entered in the card, such goods may be given second time. In view of this positive evidence on record, in my opinion, the prosecution has failed to establish that the appellant had given or sold illegally 49 Kgs. Palmolene Oil in excess of quota.

11. The learned Trial Judge, in my opinion, has not appreciated the evidence properly and not viewed the matter from this angle and, therefore, committed an error in convicting the appellant.

12. In the result, this appeal is allowed. The judgment and order of conviction and sentence passed against the appellant in Essential Commodities Case No. 18 of 1988 by the learned Special Judge, Mehsana is set aside. The fine, if paid, be refunded to the appellant. Bail-bonds stand cancelled.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)

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